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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/753,065	01/06/2004	Terry L. Baltzer	PA-00336USC1	3402

26721 7590 04/26/2005

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EXAMINER

NOLAND, KENNETH W

ART UNIT	PAPER NUMBER
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3653

DATE MAILED: 04/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/753,065

Applicant(s)

BALTZER ET AL.

Examiner

Kenneth W Noland

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5,8-17,20-22,25 and 26 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-5,8-17,20,21,25 and 26 is/are rejected.
- 7) ☒ Claim(s) 22 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>04-12-05</u> . | 6) <input type="checkbox"/> Other: ____ |

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1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 10 recites the limitation "'said planar surface'" in *lines 2 and 3*. There is insufficient antecedent basis for this limitation in the claim. Also claim 4 recites 'said tubular cross supports' and there is no antecedent basis for this recitation. Correction is required.

3. Claim 25 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. * Claim 25 depends upon 15 and claim 15 recites the same limitations as claim 25.

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claim 26 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. **Claim 26 recites a 'means for sealing said tubular sides to said frame'. It is not clearly understood from the specification what specific structure performs the 'means for sealing the tubular sides to the frame'. Clarification is required and no new matter may be entered into the disclosure.

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6. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

7. Claims 1,2,3,5,9,10,11,12,14,15,25 and 26 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 21,12,6,9,10 and 11*** of prior U.S. Patent No. **6,543,621*. This is a double patenting rejection. In regard to this, claim 1 of the application directly reads upon the method to effect the apparatus of claim 21 of the patent, and in so much as claim 26 would be understood, this claim reads upon claim 21 of the patent. Also the combined matter of claims 1 and 15 (25) of the application reads upon claim 12 of the patent, and where the frame in claim 1 of the application is considered to inherently have sides, as top or bottom or end sides, and is normally the construction of frames. Dependent claim 2 of the application recites the matter of claim 2 of the patent, in so much as, the slot in claim 1 of the patent is in the frame and the frame of claim 2 of the patent has the sides and ends, and the slot would inherently extend about the frame in a continuous channel (claim 10, of the application).

Dependent claims 3,5 and 9 of the application recite the matter of claim 6 of the patent and the rim enclosure in claim 3 of the application is recited in claim 17 of the patent by the 'opposed projections'. Dependent claim 11 of the application recites the matter of

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claim 9 of the patent. Dependent claim 12 of the application recites the matter of claim 10 of the patent. Claim 14 of the application recites the matter of claim 11 of the patent.

8. Claims 4, 8 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim*21** of U.S. Patent No. *6,543,621** in view of **Baltzer et al.*. *The patent of claim 21 does not have tubular cross supports (claim 4) or the screen cloths bonded to the perforated plate by heat and pressure (claim 8). To so provide these features, would be obvious in view of the teachings of Baltzer et al's use of the cross members which are welded to the sides (see col 4 lines 54-60) and supports on the planar surface 24 within the rim 32 (figure 4) and the use of heat and pressure to bond the perforated plate to the screen (see col 4, line 67 and col 5 lines 1-4) to effect a better support of the screen and a better bond of the screen to the perforated plate..*

9. *Claim 13 is rejected under a doctrine of obviousness-type double patenting as being unpatentable over claim 21 of US Patent no 6,543,621. Although the conflicting claim is not identical, it is not patentably distinct from each other because the use of making the gasket from polyethylene would be obvious as material commonly used to form rubber products...

10. Claims 16,17,20,21 are rejected under the doctrine of obviousness-type double patenting as being unpatentable over claim 19 of US Patent no. 6,543,621 in view of Baltzer et al. The patent of claim 19 does not have the perforated plate with the screen thereon, or the cross supports or a disclosure of the slot forming a continuous channel. To provide these features, would be obvious in view of the teachings of Baltzer et al's

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use of the perforated plate 52 and screen 53 and cross members 40,42,44--- to provide for a screening capability and for better support of the screening apparatus. Finally in regard to claim 20, in so much as, the slot is in the frame and a frame would inherently have sides and ends, the slot would extend in a 'continuous' channel about the frame.

11. Claim 22 is objected to as depending upon a rejected to claim. If this claim is rewritten in independent form, then this claim would be considered allowed. Also if claim 25 would be dependent upon claim 16, then this claim also would be considered allowed if rewritten in independent form.

12. Any inquiry concerning this communication should be directed to Kenneth Noland whose ph no is (571) 272-6941. The examiner can be reached on Monday- Friday , each week.


KENNETH W. NOLAND
PRIMARY EXAMINER